

Adopted	Rejected
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COMMITTEE REPORT

YES:	11
NO:	0

MR. SPEAKER:

Your Committee on **Agriculture and Rural Development**, to which was referred
Senate Bill 314, has had the same under consideration and begs leave to report the same
back to the House with the recommendation that said bill **be amended** as follows:

- 1 Page 23, between lines 4 and 5, begin a new paragraph and insert:
- 2 "SECTION 34. IC 14-32-8-6, AS AMENDED BY P.L.241-2005,
- 3 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2008]: Sec. 6. (a) The clean water Indiana fund is established
- 5 to carry out the purposes of this chapter. The fund shall be
- 6 administered by the division of soil conservation subject to the
- 7 direction of the board.
- 8 (b) The fund consists of:
- 9 (1) amounts deposited in the fund under IC 6-7-1-29.3;
- 10 (2) amounts appropriated by the general assembly; and
- 11 (3) donations, grants, and money received from any other source.
- 12 (c) The expenses of administering the fund shall be paid from
- 13 money in the fund.
- 14 (d) Money in the fund at the end of a state fiscal year does not revert
- 15 to the state general fund **or any other fund but remains available to**

1 **the division to carry out the purposes of this chapter."**

2 Page 27, between lines 6 and 7, begin a new paragraph and insert:

3 "SECTION 47. IC 15-3-3-3 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. The following
5 definitions apply throughout this chapter:

6 (1) "Fertilizer material" means any substance containing nitrogen,
7 phosphate, potash, or any recognized plant nutrient that is used
8 for its plant nutrient content and that is designed to have value in
9 promoting plant growth. The term includes unmanipulated animal
10 and vegetable manures.

11 (2) "Mixed fertilizer" means any combination or mixture of
12 fertilizer materials designed for use or claimed to have value in
13 promoting plant growth.

14 (3) "Commercial fertilizer" includes mixed fertilizer or fertilizer
15 materials, except nonprocessed manure, marl, lime, wood ashes,
16 and plaster.

17 (4) "Brand" means a term, design, or trademark used in
18 connection with one (1) or several grades of fertilizer.

19 (5) "Grade" means the minimum percentage of total nitrogen,
20 available phosphate (P_2O_5), and soluble potash (K_2O) stated in the
21 order given in this definition.

22 (6) "Official sample" means any sample of commercial fertilizer
23 taken by the state chemist or the state chemist's agent.

24 (7) "Ton" means a net weight of two thousand (2,000) pounds
25 avoirdupois.

26 (8) "Percent" or "percentage" means the percentage by weight.

27 (9) "Person" includes an individual, partnership, association, firm,
28 limited liability company, and corporation.

29 (10) "Distributor" means a person who offers for sale, sells,
30 barters, or otherwise supplies commercial fertilizers.

31 (11) "Sell" or "sale" includes exchange.

32 (12) "Specialty fertilizer" means a fertilizer distributed for
33 nonfarm use.

34 (13) "Bulk fertilizer" means a fertilizer distributed in
35 nonpackaged form.

36 (14) "Registrant" means a person who registers fertilizer under
37 this chapter.

38 (15) "Storage" means storage of bulk fertilizer by a person who

1 manufactures or distributes bulk fertilizer or stores bulk fertilizer
2 for personal use.

3 (16) "Board" means the Indiana fertilizer advisory board.

4 (17) "Blender" means a person ~~who is or~~ **system** engaged in the
5 business of blending fertilizer materials.

6 (18) "Blending" means the physical mixing or combining of: ~~two~~
7 ~~(2) or more fertilizer materials; including the mixing, through the~~
8 ~~simultaneous application of two (2) or more fertilizer materials;~~

9 **(A) one (1) or more fertilizer materials and one (1) or more**
10 **filler materials;**

11 **(B) two (2) or more fertilizer materials; or**

12 **(C) two (2) or more fertilizer materials and filler**
13 **materials;**

14 **including mixing through the simultaneous or sequential**
15 **application of any of the combinations in clause (A), (B), or**
16 **(C) to produce a uniform mixture.**

17 (19) "Custom blend" means a fertilizer blended according to
18 specifications provided to a blender in a soil test nutrient
19 recommendation or to meet specific **requests of a** consumer
20 ~~requirements (who is the end user)~~ before blending.

21 (20) "Use" means the ~~process of placing~~ **placement or usage of**
22 **commercial fertilizer to promote plant growth on a targeted**
23 **growing area.**

24 **(21) "Ammonium nitrate" means the ammonium salt of nitric**
25 **acid, which must contain not less than thirty-three percent**
26 **(33%) nitrogen, fifty percent (50%) of which is in the**
27 **ammonium form and fifty percent (50%) of which is in the**
28 **nitrate form.**

29 SECTION 48. IC 15-3-3-4 IS AMENDED TO READ AS
30 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) Before
31 distribution in Indiana, each brand and grade of commercial fertilizer
32 shall be registered in the name of the person whose name appears on
33 the label. The application for registration shall be submitted to the state
34 chemist on a form furnished by the state chemist and shall be
35 accompanied by a fee of twenty dollars (\$20) for each grade of each
36 brand. Fertilizers sold in packages of twelve (12) pounds or less shall
37 be registered for a fee of fifty dollars (\$50) for each grade of each
38 brand. Upon approval by the state chemist, a copy of the registration

shall be furnished to the applicant. All registrations expire on June 30 each year.

(b) In addition to the appropriate filing fee set forth in subsection (a), a late filing fee equal to one hundred percent (100%) of the appropriate filing fee shall be assessed:

(1) for an application to renew the registration of a commercial fertilizer under this section that is received after July 31; or

(2) on a product that must be registered under this section before distribution in Indiana but is found to be in distribution before registration.

(c) The application shall include the following information:

(1) The name and address of the registrant.

(2) The brand and grade.

(3) The guaranteed analysis showing the minimum percentage of plant food claimed in the following order and form:

Total Nitrogen (N) percent

Available Phosphate (P_2O_5) percent

Soluble Potash (K_2O) percent

When applied to mixed fertilizers, grade shall be given in whole numbers only. However, the state chemist may permit fractional numbers to be used for specialty fertilizers or when additional plant food elements or other additives are added. Unacidulated mineral phosphatic materials and basic slag shall be guaranteed as to both total and available phosphate and the degree of fineness. In the case of bone, tankage, and other natural organic phosphate materials, only the total phosphate need be guaranteed. Additional plant food elements or other additives, determinable by chemical methods, may be guaranteed only by permission of the state chemist who shall grant such permission only if the state chemist determines that the granting of such permission would not constitute a misrepresentation and is correct with the advice of the dean of agriculture of Purdue University or the dean's designee. When any such additional plant foods are claimed, ~~they the~~ **plant foods** shall be included in the guarantee in the form of the element and shall be subject to inspection and analysis in accordance with the methods that may be prescribed by the state chemist.

(d) A distributor is not required to register a brand of commercial fertilizer that is registered under this chapter by another person if the label used by the distributor does not differ in any respect from that

1 used by the registrant.

2 (e) A distributor who acts as a blender is not required under
3 subsection (a) to register a custom blend that the distributor produces
4 if the fertilizer materials blended together to produce the custom blend
5 are registered under subsection (a). However, a distributor who acts as
6 a blender shall provide the state chemist with the following information
7 about each custom blend that the distributor produces:

- 8 (1) The name and address of the distributor.
- 9 (2) The brand and grade of the custom blend.
- 10 (3) The guaranteed analysis of the custom blend showing the
11 minimum percentage of plant food claimed in the following order
12 and form:
 - 13 (A) The percent of total nitrogen (N).
 - 14 (B) The percent of available phosphate (P_2O_5).
 - 15 (C) The percent of soluble potash (K_2O).

16 SECTION 50. IC 15-3-3-15.5 IS ADDED TO THE INDIANA
17 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
18 [EFFECTIVE JULY 1, 2008]: **Sec. 15.5. (a) If a person violates this**
19 **chapter or a rule adopted under this chapter, the state chemist**
20 **may:**

- 21 (1) **warn or issue a citation to the person; or**
- 22 (2) **deny, suspend, revoke, or amend the person's registration**
23 **under this chapter.**
- 24 (b) **A person who knowingly or intentionally violates this**
25 **chapter commits a Class A misdemeanor.**

26 SECTION 51. IC 15-3-3-17 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 17. (a) The Indiana
28 fertilizer advisory board is established to study the regulation of
29 fertilizer and to advise the state chemist on the administration of this
30 chapter.

- 31 (b) The board consists of the following members:
 - 32 (1) Two (2) representatives of the retail fertilizer industry.
 - 33 (2) One (1) representative of fertilizer manufacturing,
34 distributing, or manufacturing and distributing.
 - 35 (3) Two (2) representatives of producers of agricultural crops.
 - 36 (4) One (1) representative of the lawn care industry.
 - 37 (5) One (1) representative of the Purdue School of Agriculture.
 - 38 (6) One (1) representative of a public conservation organization.

(7) One (1) representative of the livestock industry.

~~(7) (8)~~ The president of the Indiana Plant Food and Agricultural Chemicals Association, who shall serve as a nonvoting member.

~~(8) (9)~~ One (1) representative of the department of environmental management, who shall serve as a nonvoting member.

~~(9) (10)~~ The fertilizer administrator for the office of the state chemist, who shall serve as a nonvoting member.

~~(10) (11)~~ The engineer specialist for the office of the state chemist, who shall serve as a nonvoting member.

(12) One (1) representative of the department of agriculture, who shall serve as a nonvoting member.

(c) The voting members of the board shall be appointed by the state chemist for terms of four (4) years.

(d) Voting members of the board may be appointed for successive terms at the discretion of the state chemist.

(e) The state chemist may remove a voting member of the board for cause before the expiration of the member's term.

(f) Vacancies created by the death, resignation, or removal for cause of a member of the board must be filled in the manner prescribed for appointment to that board position. Vacancies must be filled within thirty (30) days of the death, resignation, or removal for cause.

(g) The board shall elect one (1) of its voting members chairperson to serve for a term of two (2) years, unless the chairperson's appointment expires before the expiration of the term, in which case the term is for the duration of the chairperson's appointment.

(h) The board may meet at times specified by the chairperson or by a majority of the board, but shall not meet less than annually.

(i) Five (5) voting members of the board constitutes a quorum. Official actions require a majority of the voting members. The chairperson may actively participate in all decisions of the board.

(j) Each member of the board who is not a state employee is entitled to receive both of the following:

(1) The minimum salary per diem provided by IC 4-10-11-2.1(b).

(2) Reimbursement for travel expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

Each member of the board who is a state employee is entitled to reimbursement for travel expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

(k) The board shall invite nonvoting members to serve at the pleasure of the board.

SECTION 52. IC 15-3-3.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. As used in this chapter, unless otherwise provided:

(1) The term "active ingredient" means:

(A) in the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient that will:

(i) prevent;

(ii) destroy;

(iii) repel; or

(iv) mitigate;

insects, nematodes, fungi, rodents, weeds, or other pests;

(B) in the case of a plant regulator, an ingredient that, through physiological action, will accelerate or retard the rate of growth or rate of maturation or ~~otherwise~~ alter the behavior of:

(i) ornamental or crop plants; or

(ii) the produce of ornamental or crop plants;

(C) in the case of a defoliant, an ingredient that will cause the leaves or foliage to drop from a plant; ~~and~~

(D) in the case of a desiccant, an ingredient that will artificially accelerate the drying of plant tissue; ~~and~~

(E) in the case of a nitrogen stabilizer, an ingredient that will prevent or hinder the process of nitrification, denitrification, ammonia volatilization, or urease production through an action affecting soil bacteria.

(2) The term "adulterated" means a pesticide that has its strength or purity fall below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the pesticide product or if any valuable constituent of the pesticide product has been wholly or in part abstracted.

- 1 (3) The term "antidote" means the most practical immediate
2 treatment in case of poisoning and includes first aid treatment.
- 3 (4) The term "board" means the Indiana pesticide review board
4 created by this chapter to collect, analyze, and interpret
5 information on matters relating to the use of pesticides.
- 6 (5) The term "defoliant" means any substance or mixture of
7 substances intended to cause leaves or foliage to drop from a
8 plant with or without causing abscission.
- 9 (6) The term "desiccant" means any substance or mixture of
10 substances intended for artificially accelerating the drying of plant
11 tissues.
- 12 (7) The term "device" means any instrument or contrivance
13 intended for trapping, destroying, repelling, or mitigating insects
14 or rodents or destroying, repelling, or mitigating fungi, weeds,
15 nematodes, or other pests as may be designated by the board. The
16 term does not include:
- 17 (A) equipment used for the application of pesticides when sold
18 separately from the pesticides;
- 19 (B) firearms; or
- 20 (C) simple mechanical devices, such as barriers, traps, or
21 adhesives, or other simple contrivances that are not subject to
22 this chapter as determined by the pesticide review board.
- 23 (8) The term "distribute" means to offer for sale, sell, exchange,
24 barter or otherwise supply or offer to supply pesticide products.
- 25 (9) The term "fungi" means all non-chlorophyll-bearing
26 thallophytes (all non-chlorophyll-bearing plants of a lower order
27 than mosses and liverworts), including rusts, smuts, mildews,
28 molds, yeasts, bacteria, and viruses, except those on or in living
29 man or other animals.
- 30 (10) The term "fungicide" means any substance or mixture of
31 substances intended for preventing, destroying, repelling, or
32 mitigating any fungi.
- 33 (11) The term "herbicide" means any substance or mixture of
34 substances intended for preventing, destroying, repelling, or
35 mitigating any weed.
- 36 (12) The term "highly volatile herbicide" means those herbicides
37 that the board has determined to be capable of emitting vapors
38 that may cause serious injury to desired plants by reason of

1 movement of the vapors from the area of application of the
2 herbicide to areas inhabited by the desired plants.

3 (13) The term "inert ingredient" means an ingredient that is not an
4 active ingredient.

5 (14) The term "ingredient statement" means ~~either:~~ **any of the**
6 **following:**

7 (A) A statement of the name and percentage of each active
8 ingredient, together with the total percentage of the inert
9 ingredients, in the pesticide. ~~or~~

10 (B) A statement of the name of each active ingredient in
11 decreasing order of abundance and the total percentage of
12 active ingredients, together with the name of each and total
13 percentage of the inert ingredients, if any, in the pesticide.
14 ~~except clause (A) shall apply if the preparation is highly toxic~~
15 ~~to man, determined under section 10 of this chapter; and~~
16 ~~in addition to clause (A) and clause (B); if a pesticide contains~~
17 ~~arsenic in any form; a statement of the percentages of total and~~
18 ~~water soluble arsenic; each calculated as elemental arsenic.~~

19 (15) The term "insect" means any small invertebrate animals
20 generally having the body more or less obviously segmented, for
21 the most part belonging to the class Insecta, comprising six (6)
22 legged, usually winged forms, including beetles, bugs, bees, flies,
23 and other allied classes of arthropods whose members are
24 wingless and usually have more than six (6) legs, including
25 spiders, mites, ticks, centipedes, and wood lice.

26 (16) The term "insecticide" means any substance or mixture of
27 substances intended for preventing, destroying, repelling, or
28 mitigating any insects that may be present in any environment.

29 (17) The term "label" means the written, printed, or graphic
30 matter on, or attached to, a pesticide product or the immediate
31 container of the pesticide product, and any outside container or
32 wrapper of the retail package of the pesticide product.

33 (18) The term "labeling" means all labels and other written,
34 printed, or graphic matter:

35 (A) upon the pesticide product or any of its containers or
36 wrappers;

37 (B) accompanying the pesticide product at any time; or

38 (C) to which reference is made on the label or in literature

1 accompanying the pesticide product, except when accurate,
 2 nonmisleading reference is made to current official
 3 publications of:

4 (i) the United States ~~Departments~~ **Department** of
 5 Agriculture; ~~or~~

6 (ii) **the United States Department of Interior;**

7 (iii) the United States ~~Public Department of Health Service;~~
 8 **and Human Services;**

9 (iv) **the United States Environmental Protection Agency;**

10 (v) state experiment stations;

11 (vi) state agricultural colleges; or

12 (vii) other similar federal institutions or official agencies of
 13 this state or other states authorized by law to conduct
 14 research in the field of pesticides.

15 (19) The term "misbranded" means:

16 (A) any pesticide product if its labeling bears any statement,
 17 design, or graphic representation relative to the pesticide
 18 product or to its ingredients that is false or misleading;

19 (B) any pesticide product:

20 (i) if it is an imitation of or is offered for sale under the
 21 name of another pesticide product;

22 (ii) if its labeling bears any reference to registration under
 23 this chapter;

24 (iii) if the labeling accompanying it does not contain
 25 instructions for use that are necessary and, if complied with,
 26 adequate for the protection of the public;

27 (iv) if the label does not contain a warning or caution
 28 statement that may be necessary and, if complied with,
 29 adequate to prevent injury to living man and other vertebrate
 30 animals;

31 (v) if the label does not bear an ingredient statement on that
 32 part of the immediate container and on any outside container
 33 or wrapper through which the ingredient statement on the
 34 immediate container cannot be clearly read, of the retail
 35 package that is presented or displayed under customary
 36 conditions of purchase. However, a pesticide product is not
 37 misbranded under this definition if the size or form of the
 38 immediate container, or the outside container or wrapper of

the retail package, makes it impracticable to place the ingredient statement on the part that is presented or displayed under customary conditions of purchase and the ingredient statement appears prominently on another part of the immediate container, or outside container or wrapping, or labeling, as permitted by the state chemist;

(vi) if any word, statement, or other information required under this chapter or the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et seq.) to appear on the labeling is not prominently placed on the labeling with conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in terms as to render it likely to be read and understood by the average individual under customary conditions of purchase and use; (vii) if in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying the pesticide;

(viii) in the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying the pesticide. However, physical or physiological effects on plants or parts of plants shall not be deemed to be injurious, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations; or (ix) if the immediate container does not clearly display the United States Environmental Protection Agency establishment number indicating the specific location where the pesticide product was produced.

(20) The term "nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(21) The term "nematode" means the invertebrate animals of the phylum nemathelminthes and class Nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike

bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts also called nemas or eelworms.

(22) The term "person" means any individual, partnership, association, fiduciary, corporation, or organized group of persons whether incorporated or not.

(23) The term "pesticide" means:

(A) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating a pest; and

(B) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(24) The term "pesticides for use by prescription only" means any pesticide that the board has found to be more hazardous by one (1) criterion or another than a restricted use pesticide so that any specific use and application shall be determined and prescribed by a qualified pest management specialist approved by the state chemist.

(25) The term "plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce of ornamental or crop plants, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(26) The term "registrant" means the person registering any pesticide product under this chapter.

(27) The term "restricted use pesticide" means any pesticide classified as a restricted use pesticide by the administrator of the United States Environmental Protection Agency or a pesticide that the board has determined to be unduly hazardous to persons, animals, plants, wildlife, waters, or lands, other than the pests it is intended to prevent, destroy, control, or mitigate.

(28) The term "rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal that the board shall declare to be a pest.

(29) The term "weed" means any plant that grows where the plant is not wanted.

(30) The term "aquatic ecologist" means a scientist with a degree in, or extensive training in, or experience in at least one (1) of the following:

(A) Aquatic ecology.

(B) Limnology.

(C) Invertebrate zoology.

(D) Invertebrate ecology.

(E) Ichthyology.

(F) Aquatic botany.

(G) Algology.

(H) Primary production ecology.

(31) The term "terrestrial ecologist" means a scientist with a degree in, or extensive training in, or experience in at least one (1) of the following:

(A) Animal ecology.

(B) Plant ecology.

(C) Vertebrate natural history.

(D) Herpetology.

(E) Ornithology.

(F) Mammalogy.

(G) Field zoology.

(32) The term "bulk pesticides" means any pesticide or mixture of pesticides that is transported or held in an immediate reusable container in undivided quantities greater than one hundred (100) pounds net dry weight or fifty-five (55) U.S. gallons liquid measure. The term does not include pesticides that are in the custody of the ultimate user and have been prepared for application by the ultimate user to use in dilution formula strength.

(33) "Final printed labeling" means the printed label and other labeling that will appear on or accompany a pesticide product.

(34) "Front panel" means the part of a label that is visible to a purchaser under normal conditions of sales displays.

(35) "Immediate container" means that part of a container that is in direct contact with a pesticide product.

(36) "Pest" has the meaning set forth in IC 15-3-3.6-2(22).

(37) "Pesticide formulation" means a pesticide product comprised of all active ingredients and inert ingredients.

(38) "Pesticide product" means a pesticide or device offered for distribution or use, including any labeling.

(39) "Produce" means to manufacture, prepare, compound, process, or change the container of a pesticide product or an active ingredient. The term does not include the dilution by individuals of formulated pesticides for the individual's use done according to the directions on a label.

(40) "Wildlife" has the meaning set forth in IC 15-3-3.6-2(29).

SECTION 53. IC 15-3-3.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. ~~It is unlawful for any~~ **Except as provided in section 4 of this chapter, a person to may not** produce, distribute, display, sell, or offer for sale within ~~this state~~ **Indiana** or deliver for transportation or transport in intrastate commerce or between points within ~~this state~~ **Indiana** through any point outside ~~this state~~ **Indiana** any of the following:

(1) Any pesticide product that has not been registered under section 5 of this chapter.

(2) Any pesticide product if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration.

(3) A pesticide product if the composition of the product differs from the composition as represented in connection with its registration. However, at the discretion of the state chemist, a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product.

(4) Any pesticide (except a bulk pesticide or a pesticide in a container **specifically** designed and constructed to accommodate the return and refill of ~~greater than fifty-five (55) gallons liquid or one hundred (100) pounds of dry material~~) **the container** unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to that container, and to any outside container or wrapper of the retail package through which the required information on the immediate container cannot be clearly read, a label bearing:

(A) the name and address of the manufacturer, registrant, or person for whom manufactured;

(B) the name, brand, or trademark under which the pesticide

- 1 product is sold; and
- 2 (C) the net weight or measure of the content, subject, however,
- 3 to reasonable variations as the state chemist may permit.
- 4 ~~(5) The pesticides commonly known as standard lead arsenate;~~
- 5 ~~basic lead arsenate; calcium arsenate; magnesium arsenate; zinc~~
- 6 ~~arsenate; zinc arsenite; sodium fluoride; sodium fluosilicate; and~~
- 7 ~~barium fluosilicate unless they have been distinctly colored or~~
- 8 ~~discolored as provided by rules adopted under this chapter; or any~~
- 9 ~~other white powder pesticide that the state chemist, after~~
- 10 ~~investigation of and after public hearing on the necessity for~~
- 11 ~~action for the protection of the public health and the feasibility of~~
- 12 ~~coloration or discoloration; shall, by rule, require to be distinctly~~
- 13 ~~colored or discolored unless it has been so colored or discolored.~~
- 14 ~~The state chemist may exempt any pesticide to the extent that it~~
- 15 ~~is intended for a particular use or uses from the coloring or~~
- 16 ~~discoloring required or authorized by this section if the state~~
- 17 ~~chemist determines that coloring or discoloring is not necessary~~
- 18 ~~for the protection of the public health.~~
- 19 ~~(6) (5) Any pesticide product that is adulterated or misbranded.~~
- 20 ~~(7) (6) Any pesticide in containers violating rules adopted under~~
- 21 ~~section 10(3) of this chapter. Pesticides found in containers that~~
- 22 ~~are unsafe due to damage may be seized and impounded.~~
- 23 ~~(8) (7) A highly volatile herbicide, (as defined in section 2(12) of~~
- 24 ~~this chapter) except on written permission by the state chemist.~~
- 25 ~~(9) (8) Any bulk pesticide unless it is accompanied in all transfers~~
- 26 ~~of custody or ownership by or held in storage vessels to which is~~
- 27 ~~affixed a label bearing the information specified in subdivision~~
- 28 ~~(4).~~

29 SECTION 54. IC 15-3-3.5-7 IS AMENDED TO READ AS

30 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 7. (a) The state chemist

31 shall require the submission of the complete formula of any pesticide

32 product, including the confidential:

- 33 (1) statement of formula;
- 34 (2) analytical methods for the analysis of the pesticide
- 35 formulation and the analysis of residues of the pesticide product
- 36 in environmental media; and
- 37 (3) analytical standards of the pesticide product.

38 In the case of a federally registered product, this requirement may be

1 waived.

2 (b) **The state chemist shall register a pesticide product, if:**

3 (1) the state chemist determines that the composition of the
4 pesticide product is ~~such as to warrant warrants~~ the proposed
5 claims for it; ~~and if the pesticide product;~~

6 (2) the pesticide product, ~~and~~ its labeling, and other material
7 required to be submitted comply with the requirements of section
8 5 of this chapter; ~~the state chemist shall register the pesticide~~
9 ~~product; and~~

10 (3) **the state chemist determines that the person submitting**
11 **the application for registration has complied with the**
12 **requirements of this chapter.**

13 (c) **The state chemist shall notify the applicant that the pesticide**
14 **product, labeling, or other material required to be submitted fails**
15 **to comply with the law if it does not appear to the state chemist**
16 **determines:**

17 (1) that the ~~pesticide product is such as to warrant the proposed~~
18 ~~claims for it~~ **the pesticide product; or if**

19 (2) the pesticide product, ~~and~~ its labeling, and other material
20 required to be submitted;

21 do not comply with this chapter.

22 (d) **If the state chemist notifies an applicant under subsection**
23 **(c), the state chemist shall** ~~notify give~~ **the applicant of the manner in**
24 **which the pesticide product, labeling, or other material required to be**
25 **submitted fail to comply with the law so as to afford the applicant an**
26 **opportunity to make the necessary corrections. If upon receipt of**
27 **notice, the applicant does not make the corrections, the state chemist**
28 **may refuse to register the pesticide product.**

29 ~~(d)~~ (e) The state chemist, in accordance with the procedures
30 specified in this section, may **deny**, suspend, or cancel the registration
31 of a pesticide whenever the state chemist determines that the:

32 (1) pesticide product; ~~or its~~

33 (2) **pesticide product's** labeling; **or**

34 (3) **the person submitting the application for registration of**
35 **the pesticide product;**

36 does not comply with this chapter.

37 ~~(e)~~ **Whenever (f) If:**

38 (1) an application for registration is refused; or

1 (2) the state chemist proposes to **deny**, suspend, or cancel a
 2 registration;
 3 notice of ~~such~~ **the action shall and information concerning the**
 4 **person's right to obtain a review under section 7.5 of this chapter**
 5 **must** be given to the applicant or registrant. ~~who shall have fifteen (15)~~
 6 days from the date of such notice to request a hearing on the proposed
 7 action in accordance with ~~IC 4-21.5~~.

8 SECTION 55. IC 15-3-3.5-7.5 IS ADDED TO THE INDIANA
 9 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 10 [EFFECTIVE JULY 1, 2008]: **Sec. 7.5. (a) A person who is:**

11 **(1) regulated under this chapter; and**

12 **(2) aggrieved by any decision of the state chemist;**
 13 **may obtain a review by the board, if the person files a written**
 14 **petition with the board not later than thirty (30) days after the**
 15 **state chemist's decision.**

16 **(b) The board shall provide a copy of a petition filed under**
 17 **subsection (a) to the state chemist not later than seven (7) days**
 18 **after receiving the petition.**

19 **(c) Not more than fifteen (15) days after receiving a petition**
 20 **under subsection (b), the state chemist shall certify and file with**
 21 **the board a transcript of any record related to the petition,**
 22 **including a transcript of any evidence received.**

23 **(d) Whenever a hearing is held under this section, the board**
 24 **may designate one (1) or more persons as the board's agent or**
 25 **representative to conduct the hearing. The agent or representative**
 26 **shall conduct the hearing in the manner provided by IC 4-21.5-3.**

27 **(e) After hearing the appeal, the board shall affirm, set aside, or**
 28 **modify the action of the state chemist. However, the state chemist's**
 29 **finding of facts that are supported by the substantial evidence is**
 30 **considered conclusive.**

31 **(f) A person aggrieved by any action of the board may obtain**
 32 **judicial review under IC 4-21.5-5.**

33 SECTION 56. IC 15-3-3.5-12 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 12. (a) ~~There is created~~**
 35 **The Indiana pesticide review board ~~consisting~~ is established. The**
 36 **board consists** of the following members:

37 **(1) One (1) representative of the state department of health.**

38 **(2) ~~One (1)~~ representative of the state toxicologist.**

- 1 ~~(3)~~ ~~One (1) representative of the state veterinarian.~~
- 2 ~~(4)~~ **(2)** One (1) representative of the department of natural
- 3 resources.
- 4 ~~(5)~~ **(3)** One (1) representative of the department of environmental
- 5 management.
- 6 ~~(6)~~ **(4)** One (1) representative of the Purdue University office of
- 7 agricultural research programs.
- 8 ~~(7)~~ **(5)** One (1) representative of the Purdue University
- 9 cooperative extension service.
- 10 ~~(8)~~ **(6)** Two (2) ecologists with earned doctorate degrees:
- 11 (A) one (1) a terrestrial ecologist; and
- 12 (B) one (1) an aquatic ecologist.
- 13 ~~No more than one (1) ecologist may be from a state supported~~
- 14 ~~university or college and no~~ **Not** more than one (1) ecologist may
- 15 be a plant ecologist.
- 16 ~~(9)~~ **(7)** One (1) public representative.
- 17 ~~(10)~~ **(8)** One (1) representative of the pesticide industry.
- 18 ~~(11)~~ **(9)** Two (2) representatives of producers of agricultural crops
- 19 or products on which pesticides are applied or that may be
- 20 affected by the application of pesticides:
- 21 (A) one (1) of whom represents producers of agronomic crops;
- 22 and
- 23 (B) one (1) of whom represents producers of nonagronomic
- 24 crops.
- 25 ~~(12)~~ **(10)** One (1) public representative from conservation
- 26 organizations.
- 27 ~~(13)~~ **(11)** Three (3) qualified scientists, one (1) each in the fields
- 28 of entomology, plant pathology, and weed science. One (1)
- 29 scientist must be the representative of either the Purdue
- 30 University office of agricultural research programs or the Purdue
- 31 University cooperative extension service.
- 32 ~~(14)~~ **(12)** Three (3) certified and licensed commercial applicators
- 33 of pesticides who must represent three (3) different certificate or
- 34 license categories established under IC 15-3-3.6-5.
- 35 ~~(15)~~ **(13)** The state chemist, who **is an ex officio member and**
- 36 shall serve as a nonvoting member.
- 37 ~~(16)~~ **(14)** The pesticide administrator for the office of the state
- 38 chemist, who shall serve as a nonvoting member.

1 ~~(+7)~~ **(15)** The pesticide training coordinator, who shall serve as a
2 nonvoting member.

3 (b) The voting members shall be appointed by the governor for
4 terms of four (4) years **and, subject to subsection (d), continue until**
5 **the member's successor is approved and qualified.** Appointments
6 shall be made so that no more than five (5) terms expire annually.

7 (c) Voting members may be appointed for successive terms at the
8 discretion of the governor.

9 (d) The governor may remove a voting member of the board prior
10 to the expiration of the member's term for cause.

11 SECTION 57. IC 15-3-3.5-16 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 16. ~~Ten (+0)~~ **(a) Nine**
13 **(9)** members of the board shall constitute a quorum. ~~and~~

14 **(b)** Official actions ~~will be~~ **are** subject to approval by a simple
15 majority of board members present at a called meeting.

16 **(c)** The ~~chairman~~ **chairperson** shall actively participate in all
17 decisions of the board.

18 SECTION 58. IC 15-3-3.5-17 IS AMENDED TO READ AS
19 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 17. ~~State officials and~~
20 ~~staff members of state offices as well as Purdue University office of~~
21 ~~agricultural research programs and cooperative extension service staff~~
22 ~~members appointed to the board shall serve without compensation but~~
23 ~~shall be entitled to receive per diem payments at rates and under~~
24 ~~conditions incident to these positions. The following individuals~~
25 **appointed to the board shall serve without compensation but are**
26 **entitled to receive per diem payments at rates and under conditions**
27 **incident to these positions:**

28 **(1) State officials.**

29 **(2) Staff members of state offices.**

30 **(3) Staff members of the Purdue University office of**
31 **agricultural research programs.**

32 **(4) Cooperative extension service staff members.**

33 Other members are entitled to reimbursement for traveling and other
34 expenses as provided in the ~~state~~ **Purdue University** travel policies
35 and procedures, established by the ~~Indiana~~ **Purdue University**
36 department of ~~administration~~ **transportation** and approved by the
37 ~~budget agency.~~ **Purdue University vice president of business**
38 **services.**

SECTION 59. IC 15-3-3.5-18, AS AMENDED BY P.L.40-2006, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 18. The state chemist ~~individually~~ or ~~through~~ the state chemist's agent may do the following:

(1) Enter any public or private premises, including any vehicle of transport during regular business hours: ~~in order~~

(A) to:

(i) have access to; and ~~to~~

(ii) obtain samples of; pesticide products; and

(B) to:

(i) examine; and

(ii) copy;

records relating to ~~their~~ **the production**, use, transportation, and sale **of pesticide products**, subject to this chapter and the rules adopted under this chapter.

(2) Enter at ~~at~~ **a** reasonable ~~times~~ **time** in or upon any:

(A) private; or

(B) public property;

for the purpose of inspection and investigating conditions possibly resulting from the use or misuse of a pesticide product.

SECTION 60. IC 15-3-3.5-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 19. (a) The examination of pesticide products shall be made under the direction of the state chemist for the purpose of determining whether the pesticide products comply with ~~the requirements of~~ this chapter.

(b) If it appears after an examination that a pesticide product fails to comply with this chapter, and the state chemist contemplates instituting proceedings against any person, the state chemist shall ~~cause~~ **give** appropriate notice to ~~be given to~~ the person. ~~Any~~

(c) A person notified **under subsection (b)** shall be given an opportunity to present the person's views, either orally or in writing, with regard to the contemplated proceedings, ~~and, to the state chemist.~~

(d) If ~~in the opinion of~~ the state chemist it ~~shall appear that~~ **determines that a person violated** this chapter, ~~has been violated by the person; then~~ **subject to subsection (e)**, the state chemist ~~shall~~ **may** refer the facts to the prosecuting attorney for the county in which the violation occurred with a copy of the results of the analysis or the

examination of the pesticide product. ~~Nothing in~~

(e) This chapter may **not** be construed as requiring the state chemist to report for prosecution or for the institution of other proceedings minor violations of this chapter whenever the state chemist believes that the public interests will be best served by other action.

SECTION 61. IC 15-3-3.5-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 25. (a) Except as provided in subsection (c); (f), ~~whenever if the state chemist:~~

(1) ~~finds~~ any pesticide product: ~~is found by the state chemist~~

(A) upon any premises; or

(B) in any means of conveyance;

where it is held for purposes of, or during or after, distribution, or sale, ~~or use~~; and

(2) ~~there is reason to believe determines~~ that the pesticide product:

(A) is in violation of this chapter; ~~or that the pesticide product~~

(B) has been or is intended to be:

(i) distributed; ~~or~~

(ii) sold; ~~or~~

(iii) used;

in violation of this chapter;

the state chemist may issue ~~a written or printed stop sale, use, or removal order to the owner or custodian of the pesticide product, and after receipt of the order, the owner or custodian may not sell, use, or remove the pesticide product described in the order except in accordance with the provisions of the order or until the pesticide product is released in writing by the state chemist or by order of a proper court. an order under subsection (b).~~

(b) The state chemist may issue ~~a written or printed:~~

(1) stop sale;

(2) use; or

(3) removal;

~~order to the owner or custodian of a pesticide product.~~

(c) Except as provided in subsection (d), after receiving an order under subsection (b), the owner or custodian of a pesticide product may not:

(1) sell;

(2) use; or

1 **(3) remove;**
 2 **the pesticide product described in the order.**
 3 **(d) The owner or custodian of a pesticide product who receives**
 4 **an order under subsection (b) may:**
 5 **(1) sell;**
 6 **(2) use; or**
 7 **(3) remove;**
 8 **the pesticide product only in accordance with the provisions of the**
 9 **order or until the pesticide product is released in writing by the**
 10 **state chemist or by order of a court.**

11 ~~(b)~~ **(e)** When a stop sale order is issued under subsection ~~(a)~~; **(b)**, the
 12 state chemist shall immediately issue a notification to the dealer or
 13 registrant of the pesticide product that states the following:

- 14 (1) A stop sale order has been issued on the pesticide product.
 15 (2) A reference to the specific language of the law or ~~regulation~~
 16 **rule** that is believed to have been violated.

17 ~~(c)~~ **(f)** Labels of pesticide devices may be submitted to the state
 18 chemist for approval before the sale of the pesticide device.

19 SECTION 62. IC 15-3-3.5-35 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 35. ~~(Delegation of~~
 21 ~~Duties) All authority~~ **The state chemist may delegate to an employee**
 22 **or agent any function that is** vested in the state chemist by virtue of
 23 the provisions of this chapter. ~~may with like force and effect be~~
 24 ~~executed by his authorized agent or agents.~~

25 SECTION 63. IC 15-3-3.6-2, AS AMENDED BY P.L.40-2006,
 26 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2008]: Sec. 2. As used in this chapter:

- 28 (1) "Agricultural commodity" means any plant, or part of a plant,
 29 and animals or animal products produced primarily for sale,
 30 consumption, propagation, or other use by man or animals.
 31 (2) "Animal" means all vertebrate and invertebrate species,
 32 including man and other mammals, birds, fish, and shellfish.
 33 (3) "Beneficial insects" means insects that, during some part of
 34 their life cycles, are effective pollinators of plants, are parasites
 35 or predators of pests, or are otherwise useful to man.
 36 (4) "Board" means the Indiana pesticide review board established
 37 by IC 15-3-3.5.
 38 (5) "Certified applicator" means any individual who is certified

- 1 under this chapter as qualified to use or supervise the use of
2 pesticides and has been issued a certificate as evidence of the
3 individual's qualifications.
- 4 (6) "Private applicator" means a certified applicator who uses or
5 supervises the use of pesticides for purposes of producing any
6 agricultural commodity on property owned, rented, or managed by
7 the employer or the applicator, if applied without compensation
8 on the property of another person.
- 9 (7) "Commercial applicator" means a certified applicator, whether
10 or not a private applicator with respect to some uses, who uses or
11 supervises the use of pesticides for any purpose or on any
12 property other than as provided by subdivision (6).
- 13 (8) "Defoliant" means any substance or mixture of substances
14 intended for causing the leaves or foliage to drop from a plant,
15 with or without causing abscission.
- 16 (9) "Desiccant" means any substance or mixture of substances
17 intended for artificially accelerating the drying of plant tissue.
- 18 (10) "Device" means any instrument or contrivance, other than a
19 firearm, that is intended for trapping, destroying, repelling, or
20 mitigating any pest or any other form of plant or animal life other
21 than man, bacteria, virus, or other microorganism on or in living
22 man or other living animals. This term does not include
23 equipment used for the application of pesticides when sold
24 separately from the pesticides.
- 25 (11) "Distribute" means to offer for sale, sell, exchange, barter, or
26 otherwise supply or offer to supply a pesticide.
- 27 (12) "Environment" includes water, air, land, and all plants and
28 man and other animals living in water, air, or on land and the
29 interrelationships that exist among these.
- 30 (13) "Equipment" means any type of ground, water, or aerial
31 apparatus or contrivance using motorized, mechanical, or
32 pressurized power, used to apply any pesticide.
- 33 (14) "Fungus" means any nonchlorophyll-bearing plant of a lower
34 order than mosses and liverworts, including rust, smut, mildew,
35 mold, yeast, and bacteria, except those on or in living man or
36 other animals, and those on or in processed food, beverages, or
37 pharmaceuticals.
- 38 (15) "Insect" means any small invertebrate animals generally

1 having the body more or less obviously segmented, for the most
2 part belonging to the class insecta, comprising six (6) legged,
3 usually winged forms, including beetles, bugs, bees, flies, and
4 other allied classes of arthropods whose members are wingless
5 and usually have more than six (6) legs, including spiders, mites,
6 ticks, centipedes, and wood lice.

7 (16) "Licensed pesticide business" means any licensed person that
8 owns, operates, or manages a business that is engaged in or
9 professes to be engaged in:

10 (A) using any pesticide, including restricted use pesticides; or

11 (B) making diagnostic inspections or reports to determine
12 infestations of wood destroying pests.

13 (17) "Licensed applicator for hire" means any licensed certified
14 commercial applicator who is employed by a licensed pesticide
15 business to use or to supervise the use of any pesticide on the
16 property of another and who has assumed direct responsibility for
17 the use or supervision of the use of pesticides by the business.

18 (18) "Licensed public applicator" means a licensed certified
19 commercial applicator who uses or supervises the use of a
20 restricted use pesticide as an employee of a state agency,
21 municipal corporation, or other governmental agency. The term
22 includes a commercial applicator using a pesticide in a potentially
23 hazardous situation or site as determined by the board.

24 (19) "Nematode" means invertebrate animals of the phylum
25 nemathelminthes and class nematoda. These are unsegmented
26 round worms with elongated, fusiform, or sac-like bodies covered
27 with cuticle, and inhabiting soil, water, plants, or plant parts.
28 Nematodes may also be called nemas or eelworms.

29 (20) "Permit" means a written certificate issued by the state
30 chemist or the state chemist's authorized agent to a private
31 applicator, authorizing the purchase, possession, or use of
32 restricted use pesticides.

33 (21) "Person" means any individual, partnership, association,
34 fiduciary, corporation, or any organized group of persons whether
35 incorporated or not.

36 (22) "Pest" means:

37 (A) any insect, rodent, nematode, fungus, or weed; or

38 (B) any other form of terrestrial or aquatic plant or animal life

1 or virus, bacteria, or other microorganism (except viruses,
2 bacteria, or other microorganisms on or in living man or other
3 living animals) that is declared to be a pest by the
4 administrator of the United States Environmental Protection
5 Agency or by the board.

6 (23) "Pesticide" means:

7 (A) any substance or mixture of substances intended for
8 preventing, destroying, repelling, or mitigating any pest; or

9 (B) any substance or mixture of substances intended for use as
10 a plant regulator, defoliant, or desiccant.

11 (24) "Plant regulator" means any substance or mixture of
12 substances intended, through physiological action, for
13 accelerating or retarding the rate of growth or rate of maturation
14 or for otherwise altering the behavior of plants or the produce of
15 plants. The term does not include substances to the extent that
16 they are intended as plant nutrients, trace elements, nutritional
17 chemicals, plant inoculants, or soil amendments.

18 (25) "Property" means all land and water areas, including
19 airspace, and all plants, animals, structures, buildings,
20 contrivances, **vehicles**, and machinery, appurtenant to or situated
21 on land and water areas, fixed or mobile, including any used for
22 transportation.

23 (26) "Restricted use pesticide" means:

24 (A) any pesticide classified as restricted by the Administrator
25 of the United States Environmental Protection Agency; or

26 (B) a pesticide that the board has determined to be unduly
27 hazardous to persons, animals, plants, wildlife, waters, or
28 lands other than the pests the pesticide is intended to prevent,
29 destroy, control, or mitigate.

30 (27) "Unreasonable adverse effects on the environment" means an
31 unreasonable risk to man or the environment, taking into account
32 the economic, social, and environmental costs and benefits of the
33 use of any pesticide.

34 (28) "Weed" means any plant which grows where it is not wanted.

35 (29) "Wildlife" means all living things that are not human,
36 domesticated, or pests. This term includes mammals, birds,
37 reptiles, and aquatic life.

38 (30) "Certificate of financial responsibility" means a notarized

1 statement from an officer of a bank or other financial institution
2 attesting to the fact that a licensee under this chapter has adequate
3 financial resources equal to the amount of liability insurance or
4 bonding required by rule under section 13 of this chapter to
5 protect persons who may suffer legal damages as a result of the
6 applicator's pesticide operations or the pest inspector's
7 inspections.

8 (31) "Registered pesticide dealer" means any person who
9 distributes any restricted use pesticide.

10 (32) "Licensed applicator not for hire" means a licensed certified
11 commercial applicator who is employed by a private employer to
12 use or supervise the use of a restricted use pesticide only on the
13 property of the employer. The term includes a commercial
14 applicator using a pesticide in a potentially hazardous situation or
15 site as determined by the board.

16 (33) "Pesticide consultant" means a person engaged in the retail
17 sale of pesticides who:

18 (A) offers or supplies technical advice to;

19 (B) aids; or

20 (C) makes recommendations to;

21 another person concerning the use of a pesticide as part of
22 business.

23 (34) "Pesticide formulation" means a pesticide product comprised
24 of all active ingredients and inert ingredients.

25 (35) "Pesticide product" means a pesticide or device offered for
26 distribution or use, including any labeling.

27 (36) "Registered technician" means a person who:

28 (A) is not licensed under this chapter;

29 (B) has registered with the state chemist; and

30 (C) is authorized to engage in pesticide use and related
31 activities under the direct supervision of a licensed and
32 certified applicator.

33 (37) "Use" means an act of handling, releasing, or exposing
34 individuals or the environment to a pesticide. The term includes
35 the following:

36 (A) Application or supervision of an application of a pesticide,
37 including mixing or loading the pesticide.

38 (B) Storage of pesticides and pesticide containers by the

1 intended applicator of the pesticides.

2 (C) Transportation of pesticides and pesticide containers by
3 the intended applicator of the pesticides.

4 (D) Disposal of pesticides and pesticide containers by the
5 intended applicator of the pesticides.

6 (38) "Licensed pest inspector" means an individual licensed under
7 this chapter to make diagnostic inspections or reports to
8 determine infestations of wood destroying pests on the property
9 of another person and meets the requirements under section 13 of
10 this chapter.

11 SECTION 64. IC 15-3-3.6-6, AS AMENDED BY P.L.40-2006,
12 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JULY 1, 2008]: Sec. 6. (a) **Subject to section 10 of this chapter**, a
14 person may not engage in or profess to engage in the business of:

15 (1) using a pesticide; or

16 (2) making diagnostic inspections or reports to determine
17 infestations of wood destroying pests;

18 on the property of another for hire at any time without a pesticide
19 business license issued by the state chemist. The state chemist shall
20 require an annual license fee of forty-five dollars (\$45) for each
21 pesticide business license **that is** issued.

22 (b) A pesticide business license must be obtained for each business
23 location from which pesticide use or application is conducted.

24 (c) The application for a license ~~shall be made~~ **must be** on a form
25 provided by the state chemist. Each application ~~shall~~ **must** contain
26 information necessary for the administration of this chapter.

27 (d) The state chemist may not issue a pesticide business license until
28 the applicant or a pesticide applicator in the applicant's hire who uses
29 or supervises the use of a pesticide on the property of another is
30 certified by passing an examination to demonstrate to the state chemist
31 the applicant's or applicator's knowledge of the:

32 (1) use of pesticides under the category for which the applicant or
33 applicator has applied; and ~~the applicant's or applicator's~~
34 ~~knowledge of the~~

35 (2) nature and effect of pesticides the applicant or applicator may
36 apply under the categories.

37 At least one (1) licensed applicator for hire must be associated with
38 each location from which pesticides are used for hire.

- 1 (e) The state chemist may renew any **pesticide** business license.
- 2 (f) **Subject to subsections (a), (b), (c), and (d) and section 14 of**
 3 **this chapter**, if:
- 4 (1) the state chemist finds the applicant qualified to engage in the
 5 business of using pesticides **or making diagnostic inspections or**
 6 **reports to determine infestations of wood destroying pests** on
 7 the property of another;
- 8 (2) the applicant files evidence of financial responsibility required
 9 under section 13 of this chapter; and
- 10 (3) the applicant applying for a license involving aerial
 11 application of pesticides has met all of the requirements of:
- 12 (A) the Federal Aviation Administration;
- 13 (B) the Indiana department of transportation; and
- 14 (C) any other applicable federal or state statutes or regulations
 15 to operate the equipment described in the application;
- 16 the state chemist ~~shall~~ **may** issue a pesticide business license limited
 17 to the categories for which the applicant or a pesticide applicator in the
 18 applicant's hire is qualified. The license ~~shall expire~~ **expires** January
 19 1 of the year following issue unless it has been invalidated, revoked, or
 20 suspended earlier by the state chemist. ~~Any~~ **A** surety bond or certificate
 21 of liability insurance in force or certificate of financial responsibility
 22 required under section 13 of this chapter must be maintained and in
 23 effect on a continuing basis.
- 24 (g) The state chemist may limit a license or the operation of a
 25 business to the use of certain pesticides, or to certain areas, or to certain
 26 types of equipment if the applicant is only so qualified.
- 27 (h) If a license is not issued as applied for, the state chemist shall
 28 inform the applicant in writing of the reasons the license was not
 29 issued.
- 30 SECTION 65. IC 15-3-3.6-8.1, AS AMENDED BY P.L.40-2006,
 31 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2008]: Sec. 8.1. (a) A person applying for a license described
 33 under section 7, 7.1, or 8 of this chapter must:
- 34 (1) submit an application to the state chemist on a form provided
 35 by the state chemist;
- 36 (2) pass the appropriate examination provided under section 5 of
 37 this chapter;
- 38 (3) except for a person applying for a licensed public applicator's

license, submit a fee of forty-five dollars (\$45) to the state chemist; and

(4) if the person will engage in the aerial application of pesticides, submit proof to the state chemist that the person has satisfied aerial application requirements under applicable state and federal laws.

(b) **Subject to section 14 of this chapter**, if a person meets the requirements under subsection (a), the state chemist ~~shall~~ **may** issue the appropriate license to the person.

(c) If the state chemist does not issue a license to a person ~~that~~ **who** applied for a license described under subsection (a), the state chemist shall inform the person in writing of the reason the license was not issued.

(d) A person ~~that~~ **who** has been issued a license under subsection (b):

(1) shall notify the state chemist in writing within ten (10) days after a change in or termination of the person's employment as a licensed applicator for hire, a licensed applicator not for hire, or a licensed public applicator; and

(2) may apply to the state chemist to transfer or amend the person's license by submitting an updated application form described under subsection (a)(1).

(e) A license issued under subsection (b):

(1) expires January 1 of each year; and

(2) **subject to section 14 of this chapter**, may be renewed by the person holding the license if the person:

(A) submits a renewal application on a form provided by the state chemist; and

(B) except for a person renewing a licensed public applicator's license, pays a forty-five dollar (\$45) renewal fee;

before January 1.

SECTION 66. IC 15-3-3.6-13, AS AMENDED BY P.L.40-2006, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 13. (a) The state chemist may not issue a pesticide business license or a pest inspector license until the applicant for the license has furnished a surety bond, a certificate of liability insurance in force, or a certificate of financial responsibility to protect persons who may suffer legal damages as a result of the pesticide operations or

pest inspections of the applicant. If the surety bond, liability insurance, or financial responsibility is not maintained at all times during the licensing period, the pesticide business license, pest inspector license, and any associated commercial applicator licenses **and technical registrations** are invalid. The applicant may not engage in or profess to be engaged in the business of using pesticides or pest inspection until the financial responsibility is ~~brought into in~~ compliance and the applicant's license is reinstated by the state chemist.

(b) ~~Nothing in~~ This chapter ~~relieves~~ **does not relieve** any person from liability for any damage to the person or property of another caused by the use of pesticides even though the use conforms to the rules adopted under this chapter.

SECTION 67. IC 15-3-3.6-14, AS AMENDED BY P.L.40-2006, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 14. Subject to section 14.5 of this chapter, the state chemist under IC 4-21.5-3-6 may warn, cite, or impose a civil penalty on a person for a violation under this chapter. The state chemist may also deny, suspend, revoke, or modify any provision of any license, permit, registration, or certification issued under this chapter if the state chemist finds that the applicant or the holder of a license, permit, registration, or certification has committed any of the following acts, each of which is a violation of this chapter:

(1) Made false or fraudulent claims **either verbally or** through any media misrepresenting the effect of pesticides or methods to be ~~utilized:~~ **used.**

(2) Recommended, used, or supervised the use of any registered pesticide in a manner inconsistent with its labeling approved by the United States Environmental Protection Agency or Indiana state registration for that pesticide, or in violation of the United States Environmental Protection Agency or Indiana state restrictions on the use of that pesticide.

(3) Used known ineffective or improper pesticides **or known ineffective amounts of pesticides.**

(4) Operated faulty or unsafe equipment.

(5) Operated in a careless or negligent manner.

(6) Neglected or, after notice, refused to comply with this chapter, the rules adopted under this chapter, or of any lawful order of the state chemist **or the board.**

- 1 (7) Refused or neglected to:
- 2 (A) keep and maintain the records required by this chapter; or
- 3 ~~to~~
- 4 (B) make reports and supply information when required **or**
- 5 **requested by the state chemist in the course of an**
- 6 **investigation or inspection.**
- 7 (8) Made false or fraudulent records, invoices, or reports.
- 8 (9) Engaged in or professed to be engaged in the business of:
- 9 (A) using a pesticide; or
- 10 (B) making a diagnostic inspection to determine infestations
- 11 of a wood destroying pest;
- 12 for hire on the property of another without having a pesticide
- 13 business license.
- 14 (10) Used a restricted use pesticide without having an applicator
- 15 who is licensed or permitted under this chapter in direct
- 16 supervision.
- 17 (11) Used fraud or misrepresentation in making an application
- 18 for, or renewal of, a license, permit, registration, or certification.
- 19 (12) Refused or neglected to comply with any limitations or
- 20 restrictions on or in a duly issued license, permit, registration, or
- 21 certification.
- 22 (13) Aided or abetted a person to evade the provisions of this
- 23 chapter, conspired with a person to evade the provisions of this
- 24 chapter, or allowed a license, permit, registration, or certification
- 25 to be used by another person.
- 26 (14) Made false or misleading statements during or after an
- 27 inspection concerning any infestation or infection of pests.
- 28 (15) Impersonated any federal, state, county, or city inspector,
- 29 investigator, or official.
- 30 (16) Knowingly purchased or used a pesticide that was not
- 31 registered under IC 15-3-3.5.
- 32 (17) Failed to continuously maintain financial responsibility
- 33 required under section 13 of this chapter **or to provide proof of**
- 34 **financial responsibility to the state chemist when requested.**
- 35 **(18) Intentionally altered a duly issued license, permit,**
- 36 **registration, or certification.**
- 37 **(19) Recklessly, knowingly, or intentionally impeded or**
- 38 **prevented the state chemist or the state chemist's agent from**

1 **performing a duty of the state chemist.**

2 SECTION 68. IC 15-3-3.6-16 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 16. (a) A person who
4 **recklessly, knowingly, or intentionally:**

5 (1) violates this chapter; or

6 (2) impedes ~~hinders~~, or prevents the state chemist or the state
7 chemist's ~~authorized agent in performance~~ **from performing a**
8 **duty of the state chemist's duty chemist;**

9 commits a Class C misdemeanor.

10 (b) A person who **recklessly**, knowingly, or intentionally:

11 (1) violates section 14(9) of this chapter after the state chemist
12 has issued written notification to that person regarding a previous
13 violation of section 14(9) of this chapter; **or**

14 (2) **physically assaults the state chemist or the state chemist's**
15 **agent while performing a duty of the state chemist;**

16 commits a Class A misdemeanor.

17 (c) The state chemist may bring an action to enjoin the violation or
18 threatened violation of this chapter or ~~any a rule made~~ under this
19 chapter. A court may not allow the recovery of damages for **an**
20 administrative action taken **under this subsection** if the court finds
21 that there was probable cause for the action.

22 SECTION 69. IC 15-3-3.6-18, AS AMENDED BY P.L.40-2006,
23 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
24 JULY 1, 2008]: Sec. 18. (a) The state chemist may enter upon any
25 public or private property at reasonable times, in order to do the
26 following:

27 (1) Observe the use and application of a pesticide.

28 (2) Inspect ~~any~~ equipment subject to this chapter.

29 (3) Inspect and sample property actually or reported to be exposed
30 to pesticides.

31 (4) Inspect storage or disposal areas.

32 (5) Inspect or investigate complaints of injury to humans or
33 property.

34 (6) Sample pesticides being used or to be used.

35 (7) Inspect and obtain copies of pesticide sale, distribution,
36 purchase, use, storage, and disposal records.

37 (b) ~~If the state chemist is denied access to any property for the~~
38 **purposes set forth in this chapter;** The state chemist may, upon showing

a need, apply to any court ~~of competent with~~ jurisdiction for a search warrant authorizing access to the property. ~~for said purposes.~~ The court may, ~~upon such~~ **after receiving the** application and ~~after~~ finding a need, issue the search warrant for the purposes requested.

(c) ~~Each~~ **A** prosecuting attorney to whom ~~any~~ **a** violation of this chapter is reported may institute and prosecute the violation in a court ~~of competent with~~ jurisdiction of that county without delay. The state chemist may apply for and the court grant a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any rule adopted under this chapter notwithstanding the existence of other remedies at law. The injunction may be issued without bond.

SECTION 70. IC 15-3-3.6-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 19. **(a)** Commercial applicators and licensed pest inspectors shall maintain records ~~with respect to applications concerning:~~

(1) the application of restricted use pesticides; ~~and~~

(2) diagnostic inspections to determine infestations of wood destroying pests; ~~and~~

(3) any relevant information that the state chemist ~~may deem determines by rule is necessary to further for~~ the purposes of this chapter. ~~may be specified by rule.~~

(b) The state chemist may require certified applicators to maintain records related to applications of state restricted pesticide uses. ~~These~~

(c) Records ~~shall required under this section must~~ be kept for a period of two (2) years from the date of the **inspection or the** application of the pesticide, ~~to which the records refer, and or for the time specified by rule.~~

(d) The state chemist shall be provided access to the records by the commercial applicator **or licensed pest inspector.**

SECTION 71. IC 15-3-3.6-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 20. **(a)** The state chemist may ~~by regulation adopt rules to~~ require the reporting of significant pesticide accidents or incidents.

(b) Any person:

(1) claiming damages from a pesticide accident ~~shall or incident;~~
and

(2) requesting an investigation of those damages by the state

1 **chemist;**

2 **must** file a claim on a form provided by a report with the state
 3 chemist. ~~This report must be filed within sixty (60) days after the date~~
 4 ~~that damages occurred.~~ If a growing crop is alleged to have been
 5 damaged, the report must be filed before twenty-five percent (25%) of
 6 the crop has been harvested. ~~The state chemist shall, within seven (7)~~
 7 ~~days after the receipt of such statement, notify the licensee and the~~
 8 ~~owner or lessee of the property or other persons who may be charged~~
 9 ~~with the responsibility for the damages claimed, and furnish copies of~~
 10 ~~such statements as may be requested.~~

11 SECTION 72. IC 15-3-3.6-21 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 21. The state chemist
 13 may cooperate with, and enter into agreements with, any other agency
 14 of ~~this~~ **the** state, any federal agency, or any other state agency or
 15 nongovernmental organization for the purpose of carrying out this
 16 chapter to:

- 17 (1) secure uniformity of rules;
- 18 (2) cooperate in the enforcement of the federal pesticide control
- 19 laws through the use of state or federal personnel and facilities
- 20 and to implement cooperative enforcement programs;
- 21 (3) develop and administer state plans for certification of
- 22 applicators consistent with federal standards;
- 23 (4) contract or cooperate with agencies or organizations for the
- 24 purpose of training applicators;
- 25 (5) contract for monitoring pesticides; ~~for the national plan;~~
- 26 (6) prepare and submit state plans to meet federal certification
- 27 standards;
- 28 (7) ~~regulate certified applicators;~~ **administer and enforce**
- 29 **requirements under this chapter;** and
- 30 (8) make reports to the United States Environmental Protection
- 31 Agency as the agency ~~may require.~~ **requires.**

32 SECTION 73. IC 15-3-3.6-22 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 22. The state chemist
 34 may waive all or part of the requirements provided for in sections 3, 5,
 35 6, 7, 7.1, 8, 8.1, 8.3, 9, **10.1**, and 12 of this chapter on a reciprocal basis
 36 with any other state agency or federal agency that has substantially the
 37 same standards.

38 SECTION 74. IC 15-3-3.6-24 IS AMENDED TO READ AS

1 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 24. **(a)** A person may
 2 not transport, store, or dispose of any pesticide or pesticide containers
 3 in a manner ~~as to that may~~ cause injury to humans, beneficial
 4 vegetation, crops, livestock, wildlife, beneficial insects, or to pollute
 5 any waterway in a way harmful to any wildlife in a waterway.

6 **(b)** The board may adopt rules governing the storage and disposal
 7 of pesticides or pesticide containers. In determining these standards,
 8 the board shall take into consideration any regulations issued by the
 9 United States Environmental Protection Agency."

10 Page 28, between lines 38 and 39, begin a new paragraph and insert:

11 "SECTION 79. IC 15-5-13-6 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. A commercial feed,
 13 except a custom-mixed feed, ~~shall~~ **must** be accompanied by a label
 14 bearing the following information:

15 (1) The net weight.

16 (2) The product name and the brand name, if any, under which the
 17 commercial feed is distributed.

18 (3) The guaranteed analysis stated in ~~such the~~ terms ~~as that~~ the
 19 ~~director, state chemist,~~ by ~~regulation rule,~~ determines ~~is are~~
 20 required to advise the user of the composition of the feed or to
 21 support claims made in the labeling. In all cases the substances or
 22 elements must be determinable by laboratory methods such as the
 23 methods published by ~~the Association of Official Analytical~~
 24 ~~Chemists.~~ **AOAC International.**

25 (4) The common or usual name of each ingredient used in the
 26 manufacture of the commercial feed. ~~Provided, That However,~~
 27 the ~~director, state chemist,~~ by ~~regulation rule,~~ may:

28 (i) **(A)** permit the use of a collective term for a group of
 29 ingredients ~~which that~~ perform a similar function; or

30 (ii) **(B)** exempt ~~such a~~ commercial ~~feeds, feed~~ or ~~any~~ group
 31 ~~thereof, of commercial feeds~~ from ~~this the~~ requirement ~~of for~~
 32 an ingredient statement if ~~he the~~ **the state chemist** finds that such
 33 a statement is not required in the interest of consumers.

34 (5) The name and principal mailing address of the manufacturer
 35 or the person responsible for distributing the commercial feed.

36 (6) Adequate directions for use for: ~~all~~

37 **(A)** commercial feeds containing drugs; and ~~such~~

38 **(B)** other feeds ~~as that~~ the ~~director may require~~ **state chemist**

1 **requires** by ~~regulation~~ **rule** as necessary for their safe and
2 effective use.

3 (7) ~~Such~~ Precautionary statements ~~as that~~ the ~~director state~~
4 **chemist** by ~~regulation~~ **rule** determines are necessary for the safe
5 and effective use of the commercial feed.

6 SECTION 80. IC 15-5-13-7 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 7. Custom-mixed feed
8 ~~shall~~ **must** be accompanied by a label, invoice, delivery slip, or other
9 shipping document bearing the following information:

10 (1) Name and address of the manufacturer.

11 (2) Name and address of the purchaser.

12 (3) Date of delivery.

13 (4) The product name and brand name, if any, and the net weight
14 of each ~~registered~~ commercial feed used in the mixture, and the
15 common or usual name and net weight of each other ingredient
16 used, and the specific content, stated in terms as required in
17 section 6 of this chapter, of any nutrients and nonnutritive
18 additives added at the request of the purchaser.

19 (5) Adequate directions for use for: ~~all~~

20 (A) custom-mixed feeds containing drugs; and ~~for such~~

21 (B) other feeds ~~as that~~ the ~~director may require~~ **state chemist**
22 **requires** by ~~regulation~~ **rule** as necessary for their safe and
23 effective use.

24 (6) ~~Such~~ Precautionary statements ~~as that~~ the ~~director state~~
25 **chemist** by ~~regulation~~ **rule** determines are necessary for the safe
26 and effective use of the custom-mixed feed."

27 Page 31, line 35, delete "(a) The department may implement
28 voluntary" and insert "**The department may keep records submitted**
29 **to the department by a livestock producer under a voluntary**
30 **certification program confidential.**".

31 Page 31, delete lines 36 through 40.

32 Page 32, line 26, strike "a" and insert "**an**".

33 Page 32, line 26, delete "biannual" and insert "**annual**".

34 Page 32, delete lines 34 through 35.

35 Page 32, line 36, strike "(4)" and insert "**(3)**".

36 Page 32, reset in roman line 37.

37 Page 32, line 38, reset in roman "Indiana."

38 Page 32, line 38, delete "initiative plans before each session of the

- 1 general".
- 2 Page 32, delete line 39.
- 3 Page 32, line 40, strike "(5)" and insert "(4)".
- 4 Page 33, line 3, strike "(6)" and insert "(5)".
- 5 Page 33, line 5, strike "(7)" and insert "(6)".
- 6 Page 33, line 8, strike "(8)" and insert "(7)".
- 7 Renumber all SECTIONS consecutively.
(Reference is to SB 314 as reprinted January 29, 2008.)

and when so amended that said bill do pass.

Representative Pflum